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FEDERAL MARITIME COMMISSION

 ORIGINAL

LISA ANNE CORNELL and
G. WARE CORNELL, Jr.

v.

PRINCESS CRUISE LINES (CORP)
CARNIVAL plc
and CARNIVAL CORPORATION

RESPONDENTS' MOTION TO DISMISS OR ALTERNATIVELY
MOTION FOR SUMMARY JUDGMENT

Respondents Princess Cruise Lines (Corp) ("Princess"), Carnival plc ("PLC"), and Carnival Corporation ("Carnival") (collectively "Respondents") hereby file their Motion to Dismiss the Verified Complaint filed by Lisa Anne Cornell ("Lisa Cornell") and G. Ware Cornell, Jr. ("Ware Cornell") (collectively the "Complainants") or alternatively their Motion for Summary Judgment. The Motion to Dismiss is based on the fact that (1) the FMC lacks Subject Matter Jurisdiction for this dispute; (2) there is no statutory basis for the claims raised by the Complainants; (3) The Complaint is barred by the doctrines of *collateral estoppel* and *res judicata*; and (4) Princess has the legal right to refuse to sell a cruise to the Complainants given their history of vexatious litigation, threats, and refusal to honor contracts they have signed. The alternative Motion for Summary Judgment is based on the fact that (1) the claims raised in this FMC Complaint have already been released by the Complainants by the terms of a signed Settlement Agreement in a previous litigation; (2) neither PLC or Carnival have ever taken any action to restrict the ability of either Mr. or Mrs. Cornell to vacation on their cruise ships; (3) neither PLC, Carnival or Princess has ever restricted the ability of G. Ware Cornell, Jr. to vacation on their cruise ships; and (4) the \$100 deposit has been refunded.

I. Introduction

This litigation has had a long and tortured history. The Verified Complaint ("Complaint") is but the latest installment and third lawsuit in a six year dispute that arose over a \$585 refund request and culminated with the Complainants living up to their promise to "litigate this matter to the end of time" when they were denied their \$585 refund on an art purchase. (*See* Declaration of Jeffrey Maltzman, attached as Exhibit 1).¹ The Complainants animosity toward Princess and its affiliated

¹ Jeffrey Maltzman's Declaration will be filed with the Commission by March 4, 2013

companies has resulted in defense legal fees in excess of \$100,000 during this six year battle over the \$585 refund.

In February 2007, Lisa Cornell was a passenger on Carnival's cruise ship *Imagination*. During an onboard art auction run by Carnival subsidiary Global Fine Arts ("GFA"), Lisa Cornell purchased two limited edition lithographs from artist Alexandra Nichita. After bidding on the two items at the auction, Lisa Cornell was presented with written agreements which were required to be signed before the sale was deemed consummated. Lisa Cornell signed both contracts. The contracts, signed by Lisa Cornell, both specifically stated that (1) the items shown onboard were samples and that the actual print sent may be fulfilled through a shoreside warehouse, and (2) that the purchases were refundable excluding the 15% buyer's premium which was added to each auction price.

In an auction the buyer's premium is typically a percentage of the bid price which is added onto the cost of the item to reimburse the auction house for the costs of the auction and auctioneer.² The two pieces purchased by Lisa Cornell had a total sale price, including tax, shipping and the buyer's premiums, of \$2,422.05 each. The non-refundable buyer's premium was specifically identified on each contract as \$292.50 each (\$585 total).

After returning home from the cruise and prior to receiving her purchased art, Lisa Cornell cancelled the order. GFA promptly refunded to Plaintiff the full purchase price, including shipping charges and taxes, exactly as stipulated in the purchase contracts Lisa Cornell had signed. GFA retained only the buyer's premium of \$292.50 for each print (\$585 total) as was expressly provided in the signed agreement.

² "In auctions, the buyer's premium is a percentage additional charge on the hammer price (winning bid at auction) of the lot that must be paid by the winner. It is charged by the auctioneer to cover administrative expenses. The buyer's premium goes directly to the auction house and not to the seller. Major auction houses have made this charge for some time, particularly in the fine arts sector, with premiums in the region of 10%-25%." See http://en.wikipedia.org/wiki/Buyer's_premium

Unhappy that GFA had enforced the contractual agreement by retaining the \$585 buyer's premium, Lisa Cornell filed a lawsuit in Florida State Court under Florida's Deceptive and Unfair Trade Practices Act ("FDUTPA") and engaged in a protracted, cross country litigation war (hereafter "Original Lawsuit"). Lisa Cornell was represented by her husband, attorney Ware Cornell. It quickly became apparent to GFA that Ware Cornell was intent on turning this \$585 dispute into an expensive and protracted litigation in the hopes he would be awarded substantial attorneys fees which are available to a prevailing Plaintiff in a FDUTPA case. In order to avoid spending legal fees, early in the litigation GFA made a statutory offer of judgment to Lisa Cornell in the amount of \$2,500 pursuant to Florida Statute § 768.79 and Florida Rule of Civil Procedure 1.442. A statutory offer of judgment in Florida entitles the party making the offer to recover their attorneys fees from the point the offer was made through the conclusion of the case if the party rejecting the offer fails to obtain a verdict at least 25% above the offer. Although GFA's offer was nearly five times the amount of the \$585 in dispute, Lisa Cornell rejected the offer and embarked on a lengthy and protracted abusive litigation path.

II. Procedural History

After conclusion of discovery, GFA moved for summary judgment arguing it could not be liable under FDUTPA when it had simply enforced the precise terms of the written agreement Lisa Cornell had signed (refunding all monies paid excluding the buyer's premium). On June 5, 2009, The Circuit Court granted GFA's motion for summary judgment and ruled that Lisa Cornell could not state a claim under FDUTPA because her claims of alleged misrepresentations were directly contradicted by the express terms of the contract that she signed.

Specifically, because the contract Cornell had signed provided that if the order was cancelled prior to shipping, the full purchase price less the buyer's premium up to a maximum of \$2,000 USD per piece would be refunded, the Court ruled that in its view the contract was:

“...clear and unambiguous, and she didn’t read the contract. If she did not read the contract and the contract is clear and unambiguous, what I’m doing is she does not have a FDUTPA claim. She cannot raise FDUTPA.”

(*See* Excerpts of Summary Judgment Hearing Transcript attached as Exhibit 2, at p. 28, L 6-9, 22-24.) Thus, the Court granted GFA’s motion for summary judgment.

On August 18, 2009, the Circuit Court entered Final Judgment in favor of GFA. GFA thereafter filed a motion to recoup all legal fees it had expended since the date Lisa Cornell rejected GFA’s offer of judgment (then over \$60,000 and ultimately over \$100,000). Desperate to avoid paying a potential fee award, Lisa Cornell filed a motion to amend the judgment, arguing that at the hearing on the summary judgment motion they had only addressed one of their two possible legal theories. Specifically, Lisa Cornell requested the court modify the final judgment and enter an order for partial summary judgment, forever dismissing the claim based on the retention of the \$585 buyers premium, but allowing them file additional briefs and argument on an alternative “bait and switch” theory.³ The court gave Lisa Cornell a reprieve from the potential fee award and modified its order to grant partial summary judgment in favor of GFA, and ordered the parties to submit additional briefing and return for further oral argument on the sole remaining allegation in their complaint against GFA.

On October 28, 2009, GFA filed a supplemental motion for summary judgment on the remaining claim. Since just like the non-refundable buyer’s premium issue, the fact that the buyer might receive a different numbered print from the same lithograph series was disclosed in the written agreement (which Lisa Cornell admitted she signed), GFA was confident it would again win.

³The basis for Complainants’ “bait and switch” claim was that if the art was a print series of 200 lithographs, the onboard sample might be number 15/200 but the art actually shipped to the customer from the warehouse could be number 16/200 from the same lithograph printing. Of course, since Lisa Cornell cancelled her purchase before receipt of the art it was unknown whether she would have received the exact piece she saw onboard or an identical piece from the same lithograph printing series. GFA was confident that even after additional discovery and briefing requested by Cornell, this claim would ultimately be dismissed again since the signed contract expressly provided that a different numbered print might be sent

Prior to a renewed hearing on the motion for summary judgment, the parties settled the case at mediation. In the settlement (1) GFA paid nothing to Lisa Cornell, (2) GFA waived its claim to seek attorneys fees and costs from the Complainants, (3) Complainants made a substantial donation to a mutually agreed upon charity, and (4) Complainants signed a full and complete release of all past, present and future claims and dismiss the case with prejudice in favor of all Respondents named in the FMC Complaint (*see* Mutual General Release of All Claims and Settlement Agreement (hereafter "Settlement Agreement"), attached hereto as Exhibit 3).

After settlement had been agreed, but before the agreement was signed, Lisa Cornell raised the issue of whether she would be allowed to cruise in the future. GFA (which provides art auctions on cruise ships but does not own or operate any cruise ships on its own) was unaware of whether any cruise lines had banned her from sailing, but was concerned some lines may have already done so based on the fact the Complainants had a clear history as vexatious litigants, a proven record of ignoring contractual agreements, and had threatened at least one Carnival affiliated company to "litigate this matter to the end of time." Accordingly, after much negotiation, the parties jointly agreed on the following additional provision in the settlement agreement:

GLOBAL FINE ARTS INC. ("GFA") agrees that from this date forward it will not take any action to encourage or entice any cruise line to refuse to grant either Lisa Cornell or Ware Cornell passage on any cruise ship. It is expressly agreed and acknowledged by the Cornell Parties that GFA is not a cruise line and does not control the booking policies and practices of any cruise line.

Under the express written terms of the Settlement Agreement, GFA made it clear that it could not guarantee that any cruise line would want Cornell as a customer in the future and promised only that from the date of the settlement forward it would not take any action to encourage any cruise line to bar Lisa Cornell from sailing. All parties signed the Settlement Agreement and Complainants dismissed the Original Lawsuit with prejudice on October 8, 2010. Unfortunately, the peace between the parties was short lived.

Barely one month later on November 15, 2010, the Complainants filed a new lawsuit this time naming both GFA and Princess claiming GFA and Princess violated the Settlement Agreement by rejecting a vacation cruise booking request from Lisa Cornell (hereafter the "Second Lawsuit"). During further protracted litigation in the Second Lawsuit, Princess' General Counsel Mona Ehrenreich acknowledged that several months before the GFA case settled, she had unilaterally determined that Lisa Cornell was an individual whose character and conduct (including her abusive litigation tactics, refusal to honor the contract she had signed, and her threats against affiliated company GFA) made her someone which Princess did not want to have onboard their vessels.⁴ Based on the above, in June 2010, Ms. Ehrenreich directed that Princess not accept any cruise reservation request from Lisa Cornell.⁵ As a company which carries several million guests a year, Princess is obviously a frequent target of litigation. While Ms. Ehrenreich has supervised hundreds and perhaps thousands of lawsuits against the company during her 20 year tenure with Princess, she has very rarely felt someone's litigation tactics were so abusive, extortionate and threatening that she concluded their character and conduct warranted banning them from sailing on Princess ships. For example, in the last five years, Lisa Cornell is the only individual Ms. Ehrenreich has barred from buying a Princess cruise based on their litigation conduct and tactics. (See Declaration of Mona Ehrenreich, attached as Exhibit 4). Ms. Ehrenreich did not inform GFA of her decision since GFA was a separate company completely unrelated to Princess' reservations and sales staff.⁶ (*Id.*)

⁴ Princess was aware of all the above because Princess' legal department has a contractual arrangement to provide legal support to affiliated company GFA and therefore Ms. Ehrenreich was privy to the *Cornell v. GFA* litigation.

⁵ Princess operates the Princess cruise brand and serves as the U.S. sales agent for Cunard and P&O vessels operating in the Australian market.

⁶ Ms. Ehrenreich did not attend or participate in the Cornell-GFA mediation and did not discuss the Cornell mediation with anyone on her legal staff as she had very recently been diagnosed with breast cancer and was out of the office undergoing emergent treatment. She likewise never informed any other lawyers in her department about her decision to prohibit Lisa Cornell from cruising with Princess since none of the other attorneys were involved with the reservations or sales departments. (See Declaration of Mona Ehrenreich, Exhibit 4).

After more than a year of additional costly litigation, the Court held an evidentiary hearing on February 2, 2012 and ruled that there had been no breach of the Settlement Agreement and Plaintiff's Second Lawsuit was likewise dismissed.⁷

Plaintiffs seek to continue their pattern of vexatious litigation here, now expanding their litigation war to include several new Princess affiliated companies. (The Complainants' FMC Complaint is referred to hereafter as either the "Third Lawsuit" or "FMC Complaint".)

MOTION TO DISMISS

III. The FMC lacks subject matter jurisdiction⁸

Rule 12 of the FMC states that "[i]n proceedings under this part, for situations which are not covered by a specific Commission rule, the Federal Rules of Civil Procedure will be followed to the extent that they are consistent with sound administrative practice." *See* § 502.12. Pursuant to Rule 12(h)(3) of the Federal Rules of Civil Procedure, "[i]f the court determines at any time that it lacks subject-matter jurisdiction, the court *must* dismiss the action." *See* Fed.R.Civ.P. 12(h)(3) (emphasis added).

Here, there is no subject matter jurisdiction because the FMC cannot award relief on the Complainants' claims. First, pursuant to the FMC's own jurisdictional advisory to cruise line passengers, the Commission lacks the authority to regulate cruise line operations:

It is important to know that the Commission has no authority over: passenger line vessel operations, safety issues, amenities on board vessels, or fare levels ... The Commission's Office of Consumer Complaints ("OCC") will contact a cruise line on a passenger's behalf. However, it must be emphasized that the final resolution of such complaints or inquiries is a matter between the cruise line and the individual. The role of OCC essentially is to help ensure a quick and fair consideration of the issues involved.

⁷ Princess was dismissed on the basis it was not a party to the Original Lawsuit and GFA was dismissed based on the court's evidentiary finding that there had been no breach of the settlement agreement. The Second Lawsuit was dismissed by the Court with prejudice.

⁸ This argument is applicable to all Respondents.

(See Notice to Cruise Passengers attached as Exhibit 5) (emphasis added). Issues concerning who cruise lines allow to vacation aboard their ships are operational decisions over which the FMC concedes it has no authority. The Complainants have litigated their dispute for more than six years and having now lost their case in court (twice), they now seek to litigate their grievance in the FMC. However, it is clear FMC does not have jurisdiction over this dispute and under the circumstances Respondents do not agree to voluntary jurisdiction of the FMC regarding this matter.

Second, the Complainants also contend they made \$100 deposits with Princess for a future cruise, but that the deposits were not returned. As is discussed in detail in the Summary Judgment section below, the \$100 deposit has been refunded. Regardless, the FMC has no jurisdiction over refunds of cruise deposits. The FMC Notice to Cruise Passengers advises that in cases of nonperformance "any such claims must be filed with the company that provided the bond, guaranty, etc., for the passenger line."

Finally, the damages the Complainants are seeking are attorneys fees and costs incurred by Ware Cornell during the pendency of two Florida lawsuits (their Original Lawsuit and the Second Lawsuit). The Complainants cite no legal authority whatsoever to support their claim that they are entitled to attorneys fees under any theory or that FMC would have jurisdiction to award them attorneys fees they expended in litigating (and losing) two previous Florida state court lawsuits. Pursuant to Florida law only the prevailing party on a FDUTPA claim is allowed to recoup attorneys fees and costs. Here, the Complainants lost their FDUTPA claim which was dismissed on summary judgment. Likewise the Complainants lost their Second Lawsuit against Princess and GFA claiming breach of the settlement agreement by not permitting them to sail on Princess ships. Simply put, the FMC has no jurisdiction to award attorneys fees and costs under these circumstances.

For the forgoing reasons, the FMC lacks subject matter jurisdiction and the Complaint must be dismissed. (See, Fed.R.Civ.P. 12(h)(3)).

IV. The statutory basis for the Complainants purported claim does not apply⁹

The sole cited statutory basis for Complainants claims herein are § 46 U.S.C. 41104(10) which states in pertinent part:

A common carrier, either alone or in conjunction with any other person, directly or indirectly, may not—

(10) unreasonably refuse to deal or negotiate;

See 46 U.S.C. § 41104(10). The Cornell's reliance on this provision of the Shipping Act is erroneous and without merit as a matter of law. First, the fact that GFA made an offer of judgment and attempted to settle the matter six years ago at the very beginning of the Florida litigation (for approximately five times what the Cornell's were seeking in damages) undercuts any plausible theory that the Respondents refused to deal or negotiate with them. Further, throughout the Second Lawsuit, Ware Cornell engaged in discussions with Defense counsel over whether Princess would agree to sell a vacation cruise to his wife. Princess ultimately declined to change their position (in large part because the Complainants' Second Lawsuit provided additional proof that their assessment of Lisa Cornell and her threats and tactics was accurate). Simply put, even if the cited statute applied in this circumstance (which it does not), the parties have negotiated with the Complainants—several times. The fact that she does not like the outcome of those negotiations, does not mean there has been a violation of 46 U.S.C. § 41104(10). As discussed in Section VIII below, Princess has a reasonable reason to refuse to allow Lisa Cornell to vacation on its ships given her threats, history of vexatious litigation, and history of refusing to honor or recognize contracts she has signed. This Third Lawsuit is yet another example justifying Princess' decision.

Second, § 46 U.S.C. 41104(10) advises that a common carrier may not unreasonably refuse to deal or negotiate. The definition of what is meant by “unreasonably refuse to deal or negotiate” is

⁹ This argument is applicable to all Respondents

found in the FMC's Interpretations and Statements of Policy. *See* Shipping Act, Part 545. In subsection 46 C.F.R. § 545.1 titled Interpretation of Shipping Act of 1984 – Refusal to negotiate with shippers' associations, the FMC sets forth its own interpretation of § 46 U.S.C. 41104(10):

(a) (46 U.S.C. 41104(10)) prohibits carriers from unreasonably refusing to deal or negotiate

(b) The Federal Maritime Commission interprets these provisions to establish that a common carrier or conference may not require a shipper's association to obtain or apply for a Business Review Letter from the Department of Justice prior to or as part of a service contract negotiation process.

See 545.1. Thus, the FMC itself has determined that § 46 U.S.C. 41104(10) precludes common carriers from refusing to deal or negotiate with *shipper's associations* during *service contract negotiations*. There is nothing in the statute or other authorities to support Complainants' theory that this rule has anything to do with an individual cruise line's decision not to sell a vacation cruise to one specific passenger with a history of vexatious litigation, a history of ignoring contracts they have signed, and a history of threatening to litigate a \$585 dispute to the end of time. The statute does not apply to disputes between cruise line passengers and the carrier. In fact, even if the statute applied to cruise lines passengers, it would only require the parties to negotiate (which they have done). It does not require a cruise line to carry every individual who demands to buy a cruise. (If Plaintiff's interpretation were correct, for example, a cruise line would be required to sell a cruise to a known terrorist).

Third, the Complainants' Third Lawsuit asks for damages that are repayment of attorney fees (presumably Ware Cornell wants to pay himself for representing himself and his wife) and costs for a previous State Court lawsuit they lost. Not only is there no provision in the Shipping Act that allows for the recovery of legal fees from a lawsuit they lost, but as explained below, 46 U.S.C. § 41104(10) applies to service contracts – not lawsuits by cruise line passengers. There is certainly no provision in 46 U.S.C. § 41104(10) – the sole statutory basis for Complainants' Third Lawsuit – for

payment of legal fees from one or more prior lawsuits.

Finally, the jurisdiction of the FMC is defined by the statutory mandate of the FMC. The FMC is an independent regulatory agency responsible for regulating “common carriers by water and other persons involved in the oceanborne foreign commerce of the United States” under provisions of various federal statutes, including the Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998. *See* P.L. 105-258, 112 Stat. 1902; *see also* 46 C.F.R. § 501.2; 46 U.S.C. §§ 40101 *et seq.* Although the legislative history of the Shipping Act reveals that Congress intended for the FMC to exercise jurisdiction over the administration of the Shipping Act,¹⁰ the scope of this exclusive jurisdiction is limited to “claims involving possible [violations] of the Shipping Acts.” *See Pasha Auto Warehousing, Inc. v. Philadelphia Regional Port Auth.*, 1998 WL 188848, at *6 (E.D. Pa. Apr. 21, 1998). Because the Cornell’s claim does not involve a violation of the Shipping Acts, the FMC lacks jurisdiction over this matter.

V. The Complaint against Princess is barred by the doctrines of *collateral estoppel* and *res judicata*¹¹

Lisa Cornell and Ware Cornell are barred from asking the FMC to render a ruling on an issue that was decided by a Florida Circuit Court. They are impermissibly trying to relitigate an issue that has already been resolved against them in court.

A. Plaintiffs are *collaterally estopped* from seeking their requested relief

Collateral estoppel bars relitigation of a previously decided issue when the parties are the same (or in privity) if the party against whom the issue was decided had a full and fair opportunity to litigate the issue in the earlier proceeding. *Allen v. McCurry*, 449 U.S. 90, 95 (1980). If the prior

¹⁰ *See Seaman’s Ltd. v. Nedlloyd Lines, B.V.*, 80 B.R. 181, 184 (Bankr. N.D. Cal. 1987) (citing Report of the House Committee on Merchant Marine and Fisheries, H.R.Rep. No. 53(1), 98th Cong., 1st Sess. 3–4, reprinted in 1984 U.S.Code Cong. & Ad. News 167, 168–69); *see also Pasha Auto Warehousing, Inc. v. Philadelphia Regional Port Auth.*, 1998 WL 188848, at *6 (E.D.Pa. Apr. 21, 1998) (noting that the Shipping Act “granted the [FMC] exclusive jurisdiction over the [Act]”).

¹¹ This argument is applicable to Princess only.

judgment was rendered by a state court, then the *collateral estoppel* law of that state must be applied to determine the judgment's preclusive effect. *Id.* at 96; *see also Community State Bank v. Strong*, 651 F.3d 1241, 1263 (11th Cir. 2001) Under Florida law, the essential elements of the doctrine are that the parties and issues be identical, and that the particular matter be fully litigated and determined in a contest which results in a final decision of a court of competent jurisdiction. *Mobil Oil Corp. v. Shevin*, 354 So.2d 372, 374 (Fla. 1977). All of these elements are present here.

The entire basis of the Complainants' Second Lawsuit was a complaint that GFA and Princess had breached the Original Lawsuit's settlement agreement by Princess refusing to sell a vacation cruise to Lisa Cornell. In the Motion to Enforce the Settlement Agreement which Cornell filed in the Second Lawsuit, Lisa Cornell conceded she was "seeking no damages in this proceeding," but instead was requesting an order from the court requiring Princess:

as a common carrier doing business in Florida to accept [Lisa Cornell] for passage on that same basis that it offers transport to all other persons.

(*See* Motion to Enforce the Settlement Agreement attached as Exhibit 6). Therefore, the claim raised in the Second Lawsuit (and rejected by the court) is the same allegation Complainants raise in this Third Lawsuit with the FMC.

More specifically, during the Second Lawsuit, the court held a lengthy evidentiary hearing on February 2, 2012. Ware Cornell presented the testimony of a computer expert, Lisa Cornell, and Lisa Cornell's mother. Lisa Cornell testified that at the Eleventh Hour during the mediation she requested the provision in the Settlement Agreement that she not be placed on a Do Not Book List:

A. ... I said well, there's one more thing that I have a condition and [the mediator] got very upset with me and said this was not the time to bring into it conditions. And I said unfortunately it was a drop dead consideration for me.

Q. And what was that condition?

A. The condition was that they not ban me from the cruise line

(*See* Excerpts of Evidentiary Hearing Transcript attached as Exhibit 7, at p. 52, ll. 1-9).

Throughout the hearing Ware Cornell claimed that Lisa Cornell was not only barred from Princess ships, but from other cruise lines as well:

Mr. Cornell, Jr.: Now what has happened, if you look at Exhibits 1 and 2 first, look at Exhibit 2 first, would the Court please. The Court will see that on 12/20/2010, the following happened: Princess Cruises again banned Mrs. Cornell. But they added two other cruise lines, Princess Australia which is P&O and Cunard to this.

(*See id.* at p. 78, ll. 20-25; p. 79, ll. 1).

In this Third Lawsuit before the FMC, the Complainants are asking for the very same relief they were seeking in their unsuccessful second lawsuit in Florida Circuit Court. During the evidentiary hearing in the Second Lawsuit, Ware Cornell made clear that he was seeking the same relief he now seeks here:

Mr. Cornell, Jr.: So under those circumstances we ask the Court to enforce the agreement and order Global Fine Arts to have Princess remove any restriction on Lisa Cornell's traveling. As well as on Cunard which they did after the fact on 12/20, and P & O and anybody else.

(*See id.* at p. 84, ll. 19-24).

After months of discovery and litigating the issue of the Do Not Book List, and after a lengthy evidentiary hearing involving voluminous evidence, on February 7, 2012, the Court denied Plaintiffs claims, ruled that the Complainants had failed to prove the Settlement Agreement was breached. Accordingly, the Florida state court dismissed the Second Lawsuit. Lisa Cornell and Ware Cornell have had their day in Court on this issue. Relitigating the same issue before the FMC is barred by the doctrine of *collateral estoppel*.

B. *Res judicata* principles bar the Complainants claims against Princess

When federal courts (and by extension the FMC) are asked to give *res judicata* effect to state court judgments, those courts are bound to "apply the *res judicata* principles of the law of the state whose decision is set up as a bar to further litigation." *Kizzire v. Baptist Health System, Inc.*, 441 F.3d 1306, 1308 (11th Cir. 2006). In Florida, the idea underlying *res judicata* is that "if a matter has already

been decided, the petitioner has already had his or her day in court, and for purposes of judicial economy, that matter generally will not be reexamined again in *any court* (except, of course, for appeals by right).” *Topps v. State*, 865 So.2d 1253 (Fla. 2004) (emphasis in original). The doctrine applies when four identities are present: (1) identity of the thing sued for; (2) identity of the cause of action; (3) identity of persons and parties to the action; and (4) identity of the quality of the persons for or against whom the claim is made. *Id.* at 1255. All four identities are present here.

The entire basis for the Second Lawsuit and its evidentiary hearing conducted in the Florida Circuit Court was to *force* Princess to allow her to vacation on their ships. (See Complaint filed in Florida County Court attached as Exhibit 8, at ¶¶ 19-22).¹² The issue was litigated so thoroughly in the Florida state court that even when there had been several months between hearings on the case, the judge recalled the case and noted this was about enjoining Princess from preventing Lisa Cornell from vacationing on its ships:

The Court: Because I remember the case. It’s –

Mr. Cornell, Jr.: I know you do.

The Court: [That] Princess, she and your mother, she and you wife can’t get on Princess, there was a settlement agreement for mediation and the parties to the mediation were Global Fine Arts. Okay.

Mr. Cornell, Jr.: Okay

(See Exhibit 7, at p. 3, ll. 19-25; p. 4, ll. 1-2). Despite having more than their day in court, after a lengthy litigation and a lengthy evidentiary hearing, the Court dismissed Cornell’s Second Lawsuit ruling there was no basis for the relief they sought. See Order attached as Exhibit 9.

Now in this Third Lawsuit, the Complainants are asking for the very same relief from FMC that a Florida Judge has already denied them. They are requesting that the FMC enter a final order:

¹² Complainants initially sought relief in the Second Lawsuit from the Florida County Court. The County Court Judge, however, transferred the case back to the State Circuit Court Judge who had retained jurisdiction over the Settlement Agreement.

enjoining the refusal to deal policy as to LISA CORNELL and WARE CORNELL and enter a final order restoring all economic losses.

See Complaint, RELIEF DEMANDED (Section IV) at pp. 5-6. The Complainants are barred by *res judicata* principles from asking the FMC to resolve the very same issues that were already addressed by the Florida Circuit Court. If the Complainants disagreed with the judge's ruling dismissing their Second Lawsuit, their option was to timely file an appeal to the Florida appellate court. They did not do so and cannot now seek to relitigate this same issue in this Third Lawsuit.

Moreover, any new theories raised in their Third Lawsuit with FMC (the attorneys fees and costs claims) should have been brought in the previous court litigation. Plaintiffs are now precluded from raising such claims as a matter of law. "Res judicata bars not only those issues that were subject to adjudication on the merits but also bars those issues that could have properly been included in the same action." *Gold v. Bankier*, 840 So.2d 395, 397 (Fla. 4th DCA 2003). Further, a plaintiff who sues one Respondent and *loses* cannot later assert the same claim against another Respondent. Originally the Complainants requested the Court preclude GFA and Princess from refusing to sell a cruise to Lisa Cornell. They lost. Now they are asking the FMC to preclude Princess, PLC and Carnival from doing the exact same thing.¹³

The U.S. Supreme Court has rejected such tactics ruling that if a plaintiff had his day in court, an adverse judgment against him would subsequently preclude his seeking redress against another Respondent for the same cause of action even if such other Respondent was not bound by the prior judgment. Were that not so, a plaintiff could simply keep shopping for a sympathetic judicial ear:

Permitting repeated litigation of the same issue as long as the supply of unrelated Respondents holds out reflects either the aura of the gambling table or a lack of

¹³ While this new Complaint adds PLC and Carnival as additional Respondents, their inclusion in this case is a sham as neither has ever precluded the Complainants from booking passage on their ships. This issue is further addressed in the summary judgment section of this motion.

discipline and of disinterestedness on the part of the lower courts, hardly a worthy or wise basis for fashioning rules of procedure.

See Blonder-Tongue Laboratories, Inc. v. Univ. of Ill. Foundation, 402 U.S. 313, 329 (1971).

For these reasons, *res judicata* principles bar the Complainants from relitigating the same issue before the FMC.

VI. Princess has a legal right to refuse to sell to Lisa Cornell¹⁴

It is debatable whether a modern cruise line would be deemed a common carrier in the same context as ancient shipowners. Most cases discussing the duties of a common carrier to transport guests or freight arise in the 1800's when most rail and ferry routes were government licensed to a single company and therefore if that company refused passage, then the aggrieved individual may have no alternate method of reaching their destination. The voyages and trips discussed in those cases involved transportation from one place to another rather than a modern cruise which is essentially an ocean vacation that most often simply returns the guest to the same place where their trip began. Modern cruise ships are principally a form of entertainment and vacation rather than point to point transportation. However, even if a modern cruise were still considered a common carrier form for passage, the law does not require a common carrier to sell tickets to everyone who requests to book passage.

Princess carries guests and sells cruises to guests pursuant to the terms of a written Passage Contract. Princess' Passage Contract expressly grants Princess the right to refuse passage to guests for a wide variety of reasons. More importantly, even if Princess were held to the ancient duties of "common carriers" to transport guests, those duties are not all encompassing as suggested by the Complainants. Courts have long recognized that a carrier has the right to refuse passage to guests in its discretion under a wide range of circumstances – provided only that the refusal is not based on

¹⁴ This argument is applicable to all Respondents.

some protected social criteria such as race, color, religion, etc. Steamships, even when considered common carriers, have long had the right to refuse passage to certain guests or to deny them the right to board. *Jencks v. Coleman*, 13 F. Cas. 442 (D.C. Rhode Island 1835).

There is no doubt, that this steamboat is a common-carrier of passengers for hire; and, therefore, the Respondent, as commander, was bound to take the plaintiff as a passenger on board, if he had suitable accommodations, and there was no reasonable objection to the character or conduct of the plaintiff The right of passengers to a passage on board of a steamboat is not an unlimited right. But it is subject to such reasonable regulations as the proprietors may prescribe, for the due accommodation of passengers and for the due arrangements of their business. The proprietors have not only this right, but the farther right to consult and provide for their own interests in the management of such boats, as a common incident to their right of property. They are not bound to admit passengers on board, who refuse to obey the reasonable regulations of the boat, or who are guilty of gross and vulgar habits of conduct; or who make disturbances on board; or whose characters are doubtful or dissolute or suspicious; and, a fortiori, whose characters are unequivocally bad. Nor are they bound to admit passengers on board, whose object it is to interfere with the interests or patronage of the proprietors, so as to make the business less lucrative to them. While, therefore, I agree, that steamboat proprietors, holding themselves out as common-carriers, are bound to receive passengers on board under ordinary circumstances, I at the same time insist, that they may refuse to receive them, if there be a reasonable objection.

This same principal was confirmed by the U.S. Supreme Court in *Pearson v Duane*, 71 U.S. 606 (1866) where it ruled that:

“[t]he right of passengers to a passage is not an unlimited right; but is subject to such reasonable regulations as the proprietor may prescribe for the due accommodation of passengers and for the due arrangement of their business”

The Supreme Court also noted there is no liability for refusing to carry a passenger at least where they are denied boarding before the vessel sails. The Supreme Court even held a common carrier could refuse passage based on the carrier's subjective assessment that a prospective passenger was not a fit companion for other guests. Even the dissent to the *Pearson v Duane* decision acknowledged that a shipowner may refuse passage to any prospective passenger so long as the shipowner has a reasonable basis for such objection:

“If there are reasonable objections to a proposed passenger, the carrier is not required to take him.”

See id. at 615. This same principal was applied to common carriers in the stagecoach business. In *Bennett v. Dutton*, 10 N.H. 481, 486 (Sup. Ct. N.H. 1839), the Supreme Court of New Hampshire held “Like innkeepers, carriers of passengers are not bound to receive all comers.” *See also Markham v. Brown*, 8 N.H. 523 (Sup. Ct. N.H. 1837) (“The character of the applicant may furnish just grounds for his exclusion”).

Modern courts have likewise recognized the rights of cruise lines to refuse passage to certain guests based on their past behavior or reputation. *See e.g., Afkhami v. Carnival Corporation*, 305 F.Supp.2d 1308 (S.D. Fla. 2004). In *Afkhami* a group of Iranian nationals claimed Carnival improperly refused to grant them passage onboard several cruises. The evidence showed Carnival routinely disembarked passengers or denied them access to its vessels for multiple reasons and that Carnival also bars some passengers from sailing again. These decisions are made on a case-by-case basis. The court dismissed the Plaintiffs’ claims holding they could only amend their complaint if they had a good faith basis and factual evidence showing Carnival had banned them based on a right specifically protected under the U.S. Constitution or statute. The decision thus implies Carnival had the right to refuse to sell them passage for any non discriminatory reason.

Further, it is well established that a seller has a unilateral right to select its customers and to refuse to sell its goods to anyone, for reasons sufficient to itself. *See e.g., United States v. Colgate & Co.*, 250 U.S. 300, 307 (1919) (establishing the *Colgate Doctrine* and ruling that a trader or manufacturer is free “to exercise his own independent discretion as to parties with whom he will deal; and, of course, he may announce in advance the circumstances under which he will refuse to sell”). The Colgate doctrine remains viable in antitrust law. *Jeffers Jet Supply, Inc. v. Rose America Corp.*, 75 F.Supp.2d 1332 (M.D. Ala. 1999) (“The Colgate doctrine remains good law today”). Its continued viability has been recognized in decisions by federal courts around the country. *See id.* (collecting cases). The tenants of the Colgate doctrine still allows individual sellers to refrain from dealing, even though the condition

for dealing would otherwise violate the antitrust laws. Explaining how the Colgate doctrine applies the Ninth Circuit stated:

We think it indisputable that a single manufacturer or seller can ordinarily stop doing business with A and transfer his business to B. All of the cases cited (above) stand for this rule. The rule is also expressly recognized in the cases upon which appellee relies, and which we have discussed. There is language in many of those cases which, taken out of context, plaintiff construes as meaning that, if the seller agrees with a third party a competitor of the seller, for example, or a competitor of A to do the same thing, a per se violation of section 1 has occurred. This obviously cannot mean an agreement with B, the new distributor; he could not accept the distributorship without agreeing to do so. And the decisions cited (above) make it clear that the decision of the seller to transfer his business from A to B is valid even though B may have solicited the transfer and even though the seller and B may have agreed before the seller terminates his dealings with A.

Joseph E. Seagram & Sons, Inc. v. Hawaiian Oke & Liquors, Ltd., 416 F.2d 71, 78 (9th Cir. 1969), cert. denied, 396 U.S. 1062 (1970). These doctrines apply even more clearly in the context of a prolonged vacation cruise. Unlike a seller of merchandise where there might only be a momentary interaction between the buyer and seller, the seller of a cruise vacation must have its personnel interact extensively and over a longed period of days, weeks or even months while providing meals, entertainment and services to the cruise buyer.

The law is that a refusal to deal may not be used as a device to achieve some anticompetitive goal such as to acquire a monopoly,¹⁵ or to fix prices,¹⁶ or to establish market dominance and drive out existing competitors, or to aid the enforcement of unlawful resale price restrictions and territorial allocations,¹⁷ or to increase the seller's own market dominance, or to enforce a boycott,¹⁸

¹⁵ See e.g., *Burdett Sound, Inc. v. Atlee Corp.*, 515 F.2d 1245, 1248 (5th Cir. 1975) ("It is settled law that a manufacturer has the right to select its customers and to refuse to sell its goods to anyone for reasons sufficient to itself")

¹⁶ See e.g., *Aviation Specialties, Inc. v. United Technologies Corp.*, 568 F.2d 1186, 1192 (5th Cir. 1978) ("Pratt-Whitney has the right to select its customers and to refuse to sell its goods to anyone for reasons sufficient to itself. A refusal to deal becomes unlawful only when it produces an unreasonable restraint of trade, such as price-fixing, elimination of competition, or creation of monopoly").

¹⁷ See e.g., *Walmer v. Baskin-Robbins Ice Cream Co.*, 514 F.Supp. 1028, 1030 (N.D. Tex. 1981) ("seller has 'legitimate right to select its customers and its right to refuse to sell its goods to anyone, for reasons sufficient to itself'").

¹⁸ See e.g., *Universal Brands, Inc. v. Philip Morris, Inc.*, 546 F.2d 30, 33 (5th Cir. 1977) ("[A] manufacturer has a right to select its customers and to refuse to sell its goods to anyone, for reasons sufficient to itself").

or to promote the predatory practices of the seller. This requirement of illegitimate purpose or effect marks the distinction between concerted activity which is an innocent aspect of business and concerted activity which is inimical to competition. *See generally Aviation Specialties, Inc. v. United Technologies Corp.*, 568 F.2d 1186, 1192 (5th Cir. 1978) (noting various unlawful practices).

In this case Princess clearly has the right to refuse to sell passage to a guest who had demonstrated a repeated pattern of ignoring written contracts, who is a proven and documented vexatious litigant and who has threatened one of the cruise line's affiliates. The Verified Complaint filed with the FMC, unfortunately, is yet another example supporting Princess' reasonable reason for believing Lisa Cornell should not vacation on its ships.

MOTION FOR SUMMARY JUDGMENT

A. Undisputed Statement of Material Facts

1. The Settlement Agreement waives any and all claims of any kind by the Complainants against the released parties which expressly includes Princess, PLC and Carnival. (*See* Settlement Agreement, Exhibit 3).

2. Princess has refunded the \$100 deposit to the Complainants. (*See* Declaration of Mona Ehrenreich, Exhibit 4),

3. PLC has never taken any affirmative action to ban either of the Complainants from its vessels. The Complainants are only precluded by buying a Cunard or P&O (Australia only) vacation because Princess acts as the sales agent in the U.S. for those entities and Princess won't sell to Lisa Cornell. (*See* Declaration of Simon Walters, Exhibit 10).

4. Carnival does not now nor has it ever banned either of the Complainants from its vessels nor has it ever directed any subsidiary to ban either of the Complainants. (*See* Declaration of

Martha de Zayas, Exhibit 11).¹⁹

5. Neither Princess, PLC or Carnival have ever banned G. Ware Cornell, Jr. from any of their vessels. (Declaration of Mona Ehrenreich, Exhibit 4; Declaration of Simon Walters, Exhibit 10; Declaration of Martha de Zayas, Exhibit 11).

B. Summary Judgment Standard

Federal Rule of Civil Procedure 56(c) provides that summary judgment is appropriate when there are no genuine issues of *material* fact in dispute. Further, “some alleged factual disputes between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no *genuine* issue of *material* fact.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-248 (1986)(emphasis in original). The party opposing summary judgment may not simply rely upon the pleadings or mere denials of the allegations contained in a motion for summary judgment, but rather *must adduce some evidence showing that material facts are in issue*. *Id.* at 256, see also *Celotex Corp. v. Catrett*, 277 U.S. 317, 324 (1986) (“Rule 56(c) therefore requires a non-moving party to go beyond the pleadings and by [its] own affidavits or by the ‘depositions, answers to interrogatories, and admissions on file’ designate ‘specific facts showing that there is a genuine issue for trial’”). Moreover, “conclusory allegations, unwarranted deductions of facts or legal conclusions masquerading as facts will not prevent dismissal.” *Oxford Asset Mgmt., Ltd. v. Jabaris*, 297 F.3d 1182, 1188 (11th Cir. 2002).

Summary judgment must be granted here because no genuine issues of material fact remain in dispute.

VII. The claims before the FMC have already been released by the Complainants by the terms of the original Settlement Agreement

¹⁹ Martha de Zayas' Declaration will be filed with the Commission by March 4, 2013.

From the outset of their court litigation against GFA, the Cornell's set out on a course of conduct designed to harass GFA and intended to force GFA to spend far greater sums in legal fees than the case could ever be worth. During the litigation Ware Cornell made it clear to that his goal was to punish those he believed had wronged his wife and he expressly threatened to litigate this matter to the end of time. (*See* Exhibit 1). For six years and through what is now three lawsuits, the Complainants lived up to their promise and litigated the matter as if it were complex multi-million dollar litigation as opposed to a simple \$585 contract dispute.

When this matter settled at mediation, the Complainants signed a contractual release of all past, present and future claims against any and all of the Respondents named in this Third Lawsuit. (*See* Settlement Agreement, Exhibit 3). Specifically, the Settlement Agreement included an unambiguous provision stating Lisa Cornell and Ware Cornell:

waive, release and forever discharge all past, present *and future* claims, rights, causes of action...which either GFA PARTIES or CORNELL PARTIES may now or *in the future* have, against each other including, *but not limited to*, claims in any way related to Lisa Cornell's cruise aboard the cruise ship *Imagination* on or about February 2007 and any art auction or art purchase thereon.

(*See id.* at p. 1) (emphasis added). The "GFA PARTIES" were specifically defined in the same paragraph to include:

GLOBAL FINE ARTS INC. and CARNIVAL CRUISES FINE ARTS, on their own behalf and on behalf of their past, present and future parent companies, subsidiaries, affiliates (*including but not limited to Carnival Corporation dba Carnival Cruise Lines, Carnival plc, Princess Cruise Lines Ltd*)"

(*See id.* at p. 1) (emphasis added). The Complainants have filed their Complaint with the FMC against the very parties specifically named *and released* in the Settlement Agreement. Moreover, the signed Release waives any and all claims of any kind by the Complainants against the released parties which includes Princess, PLC and Carnival.

The Release signed by the Complainants expressly stated that the release applied to all past, present and future claims and was not limited to claims related to the underlying dispute regarding

her art auction purchase. Nonetheless, even if the Settlement Agreement were interpreted to only apply to claims arising from or related to the original dispute, Princess' decision not to sell a cruise to Lisa Cornell is based entirely upon events which directly relate to and arose from that dispute (including her history of ignoring signed written agreements, her history of vexatious litigation tactics and her threats of future litigation). It is rather ironic that this new FMC Complaint is yet another example of the Complainants refusing to acknowledge and abide by the terms of contracts they have signed!

GFA waived claims of over \$100,000, as valuable consideration for the Complainants release of all past, present, and future claims against GFA, Princess, PLC and Carnival. GFA further agreed to "not take any action to encourage or entice any cruise line to refuse to grant either Lisa Cornell or Ware Cornell passage on any cruise ship," from the date of the agreement forward. After execution of the Settlement Agreement, the Complainants could only bring a claim against GFA for breach of the Settlement Agreement. However, as the Florida Circuit Court ruled in dismissing Complainants' Second Lawsuit, GFA upheld its end of the bargain. By bringing this claim before the FMC, the Complainants are yet again ignoring the terms of written agreements they have signed and are now in breach of the Settlement Agreement. For the foregoing reasons, all of Plaintiffs claims against all of the named Respondents have been permanently released and Respondents are entitled to judgment as a matter of law.

VIII. Neither PLC or Carnival have ever taken any action to bar the Complainants from vacationing on their ships

In their Complaint filed with the FMC, the Complainants sue both Carnival and PLC claiming they have banned them from sailing on PLC and Carnival ships. The undisputed fact is, however, that neither of these companies has ever taken any action to bar either of the

Complainants from buying their cruises.²⁰ (*See* Declaration of Simon Walters, Exhibit 10; *see also* Declaration of Martha de Zayas, Exhibit 11). Moreover, the undisputed fact is that even Princess has never banned G. Ware Cornell, Jr. from its cruises and that only his wife – the litigant who launched this six year and three lawsuit battle has been barred from buying a future cruise vacation from Princess. (*See* Declaration of Mona Ehrenreich, Exhibit 4). For the foregoing reason, Plaintiffs claims against PLC and Carnival must be dismissed as neither Carnival nor PLC have ever taken any action to bar the Complainants from sailing and Ware Cornell's claims against Princess must also be dismissed. Thus, there is no disputed material fact and PLC and Carnival are entitled to judgment as a matter of law and Princess is entitled to judgment as to the claims of Ware Cornell.

IX. The \$100 Deposit has been refunded

Upon receipt of the FMC Complaint, Princess researched the issue and determined that Lisa Cornell had indeed placed \$100 on deposit. The company has no record of Lisa Cornell ever requesting it be refunded. Upon receipt of the FMC Complaint advising of the deposit, Princess promptly refunded the full \$100 deposit back to the Complainants' credit card. (*See* Declaration of Mona Ehrenreich, Exhibit 4). For the foregoing reason, Princess is entitled to judgment as a matter of law with regard to all claims relating to the \$100 deposit since it has been refunded.

X. Conclusion

While the Federal Maritime Commission plays an important role in regulating maritime commerce, it lacks (1) Subject Matter Jurisdiction for this dispute and therefore should summarily dismiss Complainants' FMC Complaint. Further the FMC Complaint should be dismissed because (2) as there is no statutory basis for the claims raised by the Complainants; (3) the Complaint is barred by the doctrines of *collateral estoppel* and *res judicata*; and (4) Princess has the legal right to refuse

²⁰ Ware Cornell is not banned from cruising on any cruise line to the best of Respondents' knowledge. Lisa Cornell is only barred from buying a cruise on Cunard and P&O (in Australia only) because Princess acts as the U.S. sales agent for those cruises and Princess does not wish to enter into a contractual relationship with Lisa Cornell given her documented history of vexatious litigation, ignoring her written contracts and threats against affiliated companies.

to sell a vacation cruise to Lisa Cornell given her six year history of vexatious litigation, threats, and refusal to honor contracts has signed. In the alternative, Respondents are all entitled to summary judgment because (1) the claims raised in this FMC Complaint have already been released by the Complainants; (2) neither PLC or Carnival have ever taken any action to restrict the ability of either Mr. or Mrs. Cornell to vacation on their cruise ships; (3) None of the Respondents have ever restricted the ability of G. Ware Cornell, Jr. to vacation on their cruise ships; and (4) the \$100 deposit has been refunded.

Dated: February 27, 2013
Miami, Florida

Respectfully Submitted,

MALTZMAN & PARTNERS, P.A.

Attorneys for Respondents

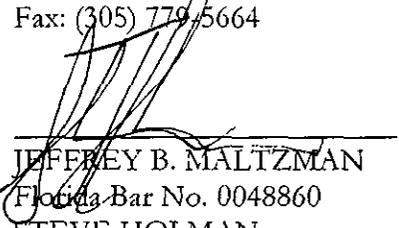
55 Miracle Mile Suite 320

Coral Gables, Florida 33134

Tel: (305) 779-5665

Fax: (305) 779-5664

By:


JEFFREY B. MALTZMAN

Florida Bar No. 0048860

STEVE HOLMAN

Florida Bar No. 0547840

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing Motion to Dismiss has been furnished via Electronic and U.S. Mail to G. Ware Cornell, CORNELL & ASSOCIATES, P.A. 2645 Executive Park Drive, Weston, FL 33331 on this 27th day of February, 2013.

By:

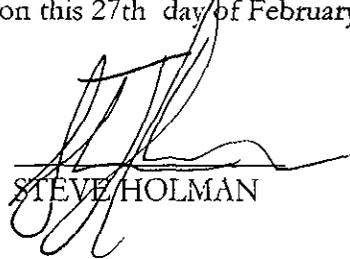

STEVE HOLMAN

Exhibit “2”

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IN THE CIRCUIT COURT OF THE
17th JUDICIAL CIRCUIT, IN
AND FOR BROWARD COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

CASE NO.: 07-07894 CA CE 04

LISA ANNE CORNELL,

Plaintiff,

vs.

GLOBAL FINE ARTS, INC.,
a Florida corporation,

Defendant.

-----/

Broward County Courthouse
201 Southeast Sixth Street
Fort Lauderdale, Florida
Friday, 10:35 a.m.
June 5, 2009

The above-entitled cause came on for
hearing before the Honorable Robert B. Carney
before Nancy H. Nordstrom, Registered Merit
Reporter, Notary Public for the State of Florida at
Large.



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APPEARANCES:

ON BEHALF OF THE PLAINTIFF:
CORNELL & ASSOCIATES, P,A.
1792 Bell Tower Lane
Suite 210
Weston, Florida 33326
BY: G. Ware Cornell, Esq.

ON BEHALF OF THE DEFENDANT:
MALTZMAN FOREMAN
2 South Biscayne Boulevard
Suite 2300
Miami, Florida 33131
BY: Steve Holman, Esq.
Darren Friedman, Esq.



1 MR. CORNELL: Judge, if it's not a
2 contract --

3 THE COURT: If the hammer falls --

4 MR. CORNELL: There is no --

5 THE COURT: This is where you and I
6 disagree. My view is the contract is the
7 written contract. The contract is clear
8 and unambiguous, and she didn't read the
9 contract. If she did not read the contract
10 and the contract is clear and unambiguous,
11 what I'm doing is she does not have a
12 FDUTPA claim. She cannot raise FDUTPA.

13 MR. CORNELL: If they are saying
14 things that are absolutely contrary to
15 their contract, they're saying it
16 repeatedly and openly, and even put it in
17 writing ahead of time. How is that not
18 deceptive?

19 THE COURT: I'm still finding, at this
20 point, that where the contract very
21 specifically covers that -- I'm not saying
22 that FDUTPA trumps all contract law. If
23 the contract clearly and unambiguously
24 covers it and covers specifically what they
25 are saying, if it doesn't rise to a FDUTPA



1 claim.

2 MR. CORNELL: They haven't proved this
3 is a contract, Judge. This is their burden
4 to prove it's a contract. They don't even
5 make that argument. They don't make the
6 argument that this is a contract supported
7 by consideration. That is not the argument
8 they have made.

9 THE COURT: That's the Court's ruling.

10 MR. HOLMAN: Your Honor, should we
11 prepare a written order?

12 THE COURT: Well, since we've got a
13 record here and I've explained it, I will
14 just order it granted, the motion for
15 summary judgment, and if anyone wants to
16 appeal, my reasons are listed right on the
17 record.

18 MR. FRIEDMAN: Darren Friedman on
19 behalf of the defendant. As well as that
20 the Court retain jurisdiction for motion
21 for cause to strike this --

22 THE COURT: I think that's under
23 Rule 1.525. It's to be brought within
24 certain periods of time.

25 MR. FRIEDMAN: Thank you, your Honor.



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(Thereupon, the hearing was
concluded at 11:06 a.m.)



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CERTIFICATE OF SHORTHAND REPORTER

STATE OF FLORIDA)

) SS.

COUNTY OF BROWARD)

I, NANCY H. NORDSTROM, RMR, Notary Public, do hereby certify that I was authorized to and did stenographically report the foregoing proceedings and that the transcript is a true and correct transcription of my stenotype notes of the proceedings.

Dated this 7 day of July 2009.

Nancy H. Nordstrom

NANCY H. NORDSTROM
Registered Merit Reporter



Exhibit “3”

**MUTUAL GENERAL RELEASE OF ALL CLAIMS
AND SETTLEMENT AGREEMENT**

FOR THE SOLE CONSIDERATION OF A MUTUAL RELEASE OF ALL CLAIMS, the adequacy of which we hereby acknowledge, I, LISA CORNELL and WARE CORNELL, on our own behalf and on behalf of our dependents, heirs, executors, administrators and assigns (hereafter collectively the "CORNELL PARTIES") and GLOBAL FINE ARTS INC. and CARNIVAL CRUISES FINE ARTS, on their own behalf and on behalf of their past, present and future parent companies, subsidiaries, affiliates (including but not limited to Carnival Corporation dba Carnival Cruise Lines, Carnival plc, Princess Cruise Lines Ltd., and Princess Cruise Lines Inc.), and each and all of their employers, officers, directors, partners, agents, employees, independent contractors, stockholders, vessels, underwriters, insurers, attorneys, servants, managers, representatives, adjusters, predecessors, successors in interest and assigns (hereafter collectively the "GFA PARTIES"), hereby waive, release and forever discharge all past, present and future claims, rights, causes of action, damages, obligations, attorneys fees, costs, judgments, physical or emotional injuries, compensation, wages, bonuses, transportation charges, debts, dues, penalties, forfeitures, judgments, costs, interest, losses of service, claims for sanctions, executions and demands which either GFA PARTIES or CORNELL PARTIES may now or in the future have, against each other including, but not limited to, claims in any way related to Lisa Cornell's cruise aboard the cruise ship *Imagination* on or about February 2007 and any art auction or art purchase thereon.

This Mutual Release of All Claims and Settlement Agreement is intended to cover all claims, including but not limited to any and all claims or causes of action alleged, or which could have been alleged, in the lawsuit pending IN THE CIRCUIT COURT OF THE 17TH JUDICIAL CIRCUIT IN AND FOR BROWARD COUNTY, FLORIDA, CASE NO.: 07-07894 CA CE 04, captioned LISA ANNE CORNELL, Plaintiff v. GLOBAL FINE ARTS, INC., Defendant, including any and all claims for attorneys fees or costs by either side against the other. The CORNELL PARTIES agree to dismiss such suit or any other lawsuit or complaint brought against any of the GFA PARTIES with prejudice. Each party agrees to bear its own attorneys' fees, costs, legal expenses from and in connection with the above referenced incident and resulting legal actions.

And, without limiting the generality of the foregoing, this Release covers and fully discharges any claim asserted by either party in any suit or action filed in any court against the other party.

The parties all acknowledge that they understand the full contents and effect of this Release, and that they hereby fully and consciously contract with all the said persons, firms and corporations to release each other from any and all liability and responsibility of any kind and

Lisa Cornell Initial


A rectangular signature strip with a grid pattern, containing the handwritten initials 'LWC' and 'WR' above it.

that they have been fully and independently advised by their own counsel regarding the effect of this Release, including, but not limited to the legal and tax consequences of this Release and settlement.

Each party further acknowledges and warrants that no other person or entity has, or has had, any interest in the claims, demands, obligations, or causes of action referred to herein, except as otherwise set forth herein; that they have the sole right and exclusive authority to execute this Release and that neither party has sold, assigned, transferred, conveyed or otherwise disposed of any of the claims, demands, obligations, or causes of action referred to herein to any third party.

The CORNELL PARTIES agree from this date forward to keep the terms of said settlement, the allegations at issue in the litigation referenced herein, and all facts relating to the incident confidential. As part of the terms of said settlement the CORNELL PARTIES agree from this date forward never to disclose, or cause to be disclosed, the facts and circumstances of this case or their dispute with GFA PARTIES to anyone, including, but not limited to, any member of the press or public media, or other person or entity, who could reasonably be anticipated to cause said information to be disseminated to the public, nor to mention the names of any of GFA PARTIES in conjunction with the dispute which is the subject of this Release and this lawsuit. If CORNELL PARTIES breach this confidentiality provision, or cause it to be breached by having any other person disclose such information, Lisa Cornell agrees to pay to Global Fine Arts Inc. as a liquidated damage for such breach the sum of \$25,000. Nothing herein shall be construed to prevent Lisa Cornell from discussing in a confidential setting the facts giving rise to the litigations referenced herein with Ware Cornell.

GLOBAL FINE ARTS INC. ("GFA") agrees that from this date forward it will not take any action to encourage or entice any cruise line to refuse to grant either Lisa Cornell or Ware Cornell passage on any cruise ship. It is expressly agreed and acknowledged by the CORNELL PARTIES that GFA is not a cruise line and does not control the booking policies and practices of any cruise line. In consideration for the agreement of GFA in this paragraph, Lisa Cornell and Ware Cornell agree that if they sail onboard any cruise where GFA is operating an onboard art auction, they shall not disparage GFA, shall not attend such auction, shall not purchase or attempt to purchase anything from GFA, and shall not discuss said auction with any other individuals onboard. If Lisa Cornell or Ware Cornell breach their agreement within this paragraph, then GFA shall be relieved of its obligations within this paragraph. Should Ms. Lisa Cornell be on any cruise as the caretaker or companion for any member of her immediate family who is unable to attend the auction on their own due to their physical condition, Lisa Cornell shall be permitted to physically assist such family member in attending the onboard art auction, provided Lisa Cornell does not speak to any third persons other than her family members and does not in any way disrupt the auction.

Lisa Cornell Initial

LC *WC*
CONFIDENTIAL

This document may be signed in counterparts. A scanned copy or facsimile copy shall be deemed valid as though it were an original. As used in this document all singular forms of words shall include their plural meaning and all plural forms of any work shall include their singular meaning.

Dated August 11, 2010

Lisa Anne Cornell
Lisa Cornell

STATE OF Florida
COUNTY OF Broward) SS

BEFORE ME personally came LISA CORNELL, personally known to me or produced as identification _____, to be the individual described in and who executed this document, and acknowledged that she fully understood its contents and that it was a release of any and all claims which arose or which may arise out of the subject accident described above and that she duly executed this release as her free act and deed and for the sole consideration therein expressed.

WITNESS my hand and official seal this 11 day of August, 2010.

[Signature]
Notary Public

My Commission Expires:

Dated August 7/23, 2010
[Signature]
Global Fine Arts, Inc.
By: Karen Reich

NOTARY PUBLIC-STATE OF FLORIDA
Shalini Fakiri
Commission # DD913423
Expires: AUG. 03, 2013
BONDED THRU ATLANTIC BONDING CO., INC.

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) SS
BEFORE ME a Notary Public, personally appeared KAREN REICH, personally known to me or produced as identification [Signature], on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged that they executed the same in her authorized capacity, and that by her signature on the instrument, the person or the entity on behalf of which the person acted, executed the instrument.
WITNESS my hand and official seal this 11 day of August, 2010.

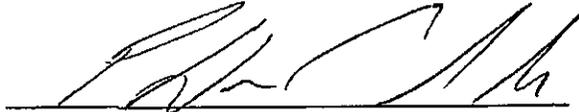
[Signature]
Notary Public

My Commission Expires

KIMBERLY J. CALDERON
Commission # 1883983
Notary Public - California
Los Angeles County
My Comm. Expires Mar 25, 2014

ATTORNEY ADDENDUM

The undersigned attorney for Plaintiff Lisa Cornell agrees to be bound by the confidentiality clause of the foregoing and further agree not to convey the facts and circumstances of this case or this dispute to any media source or settlement/jury verdict reporter(s).



Ware Cornell
Attorney for Plaintiff

Settlement approved as to form and content.

Jeffrey Maltzman
Attorney for Global Fine Arts, Inc.

Exhibit “4”

FEDERAL MARITIME COMMISSION

WASHINGTON, D.C.

DOCKET NO. 13-02

LISA ANNE CORNELL and
G. WARE CORNELL, Jr.

v.

PRINCESS CRUISE LINES (CORP)
CARNIVAL plc
and CARNIVAL CORPORATION

DECLARATION OF MONA EHRENREICH IN SUPPORT OF
MOTION TO DISMISS AND MOTION FOR SUMMARY JUDGMENT

1. I, Mona Ehrenreich, am General Counsel for Princess Cruise Lines Ltd. ("Princess") and am duly authorized to swear this Declaration on behalf of Princess in support of the Motion to Dismiss and Motion for Summary Judgment now before the Federal Maritime Commission. I am over the age of 18 and make this declaration based on information known to me personally.

2. Princess is a Bermuda Corporation with a principle place of business in Santa Clarita, California.

3. I have worked in the Princess legal department for approximately 20 years and have been the company's General Counsel for the past 12 years. I provide legal services as needed to both Princess and GFA. One of my tasks on behalf of GFA was to monitor the lawsuit which the Cornells originally filed against GFA. Based on my exposure to the Cornell v GFA litigation, I concluded Lisa Cornell was a vexatious litigant, an individual with a proven record of ignoring

contractual terms she had signed, and someone who through her counsel had threatened to "litigate this matter to the end of time." Despite the fact this was a lawsuit over \$585, Lisa Cornell's conduct of the case, including her refusal to accept GFA's \$2,500 offer of judgment in my opinion was extortionate, unethical and unreasonable.

4. I made the determination, on behalf of Princess, that Lisa Cornell was an individual whose conduct and tactics made her someone Princess did not want sailing on its ships. Ironically, Lisa Cornell's second lawsuit against GFA and Princess and now this third lawsuit against Princess, Carnival Corporation, and Carnival plc, have done nothing but reinforce my conclusions regarding her conduct.

5. I made and implemented the decision to refuse to sell cruises to Lisa Cornell prior to the mediation in the Cornell v GFA original litigation. At no time has anyone from GFA ever suggested Princess ban the Cornells from sailing. Although I had planned to attend the Cornell v GFA mediation myself, I was diagnosed with cancer shortly before the mediation and was out of the office and unable to attend due to emergent treatment.

6. As a major cruise line carrying several million guests each year, Princess is a frequent target of litigation. While I have supervised hundreds and perhaps thousands of lawsuits against the company during my 20 year tenure with Princess, I have very rarely felt someone's litigation tactics were so abusive, extortionate and inappropriate that I concluded their conduct and character warranted banning them from sailing on our ships. For example, in the last five years, Lisa Cornell is the only litigant I have barred from buying a Princess cruise solely because of what their litigation tactics revealed about their conduct and character.

7. I never instructed that Ware Cornell be barred from sailing with Princess. I have searched our records and determined that neither Ware Cornell, Ware Cornell, Jr., George Ware Cornell, George Ware Cornell, Jr., G. Ware Cornell, and G. Ware Cornell, Jr. have ever been banned from

booking passage on Princess ships.

8. Princess has refunded the \$100 deposit which Lisa Cornell submitted. Attached hereto as Exhibit A is documentation of the refund.

I declare under penalty of perjury that the foregoing is true and correct.

Date: February 26, 2013

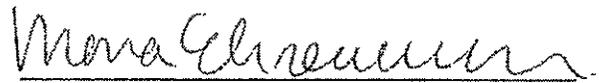

MONA EHRENREICH

Exhibit "A"

Exhibit “5”



FEDERAL MARITIME COMMISSION

Regulating the nation's international ocean transportation for the benefit of exporters, importers, and the American consumer.

Notice to Cruise Passengers

Due to the recent bankruptcy of several cruise lines, and the resulting impact on involved passengers, the Federal Maritime Commission ("Commission" or "FMC") is issuing this advisory notice to explain its jurisdiction and responsibility over cruise lines, and to provide useful information to the cruising public. Additionally, each year the Commission receives numerous complaints and inquiries from cruise vessel passengers and prospective passengers regarding various problems they have encountered in dealing with cruise lines. Accordingly, the information set forth below should help to answer common questions and assist passengers as they plan prospective cruises.

I. THE ROLE OF THE FMC

The FMC is responsible for ensuring that passenger lines maintain sufficient financial coverage to indemnify passengers in cases of nonperformance of the voyage, or for instances of injury or death on voyages. Separate protection must be obtained to cover nonperformance, and then additional coverage is required for liability against injury or death. Passenger vessel owners normally establish their financial responsibility by means of a bond or guarantee. Note that the Commission's statutory authority is limited to vessels that board passengers at U.S. ports - we have no jurisdiction for cruises that originate outside of the United States. This applies to air/sea packages as well, i.e. we have no jurisdiction in cases where a passenger flies out of the U.S. and then boards a vessel at a foreign port. Also, only vessels with berth or stateroom accommodations for 50 or more passengers are required to demonstrate their financial responsibility.

It is important to know that the Commission has no authority over: passenger line vessel operations, safety issues, amenities on board vessels, or fare levels. Additionally, we are not the entity that provides refunds in cases of nonperformance - any such claims must be filed with the company that provided the bond, guaranty, etc., for the passenger line. In such instances, the FMC can provide pertinent information about applicable coverage.

Nonetheless, the Commission is pleased to review any problems or inquiries that passengers bring to its attention. The Commission's Office of Consumer Complaints ("OCC") will contact a cruise line on a passenger's behalf. However, it must be emphasized that the final resolution of such complaints or inquiries is a matter between the cruise line and the individual. The role of OCC essentially is to help ensure a quick and fair consideration of the issues involved.

II. CRUISE LINES' LEGAL OBLIGATIONS

Ordinarily, by booking a cruise, a passenger has entered into a contract with the cruise operator. The terms and provisions of the contract are contained in the cruise operator's passenger ticket contract. Although contracts differ in detail among the various lines, one important characteristic is fairly common: the contracts invariably grant the cruise lines wide latitude in all matters involving both operations and customer relations. To the extent that passenger complaints encompass claims for financial reimbursement or other forms of compensation, the terms of a passenger ticket contract ordinarily will govern the obligations of the cruise line. If a line's decision comports with the terms of the ticket, it usually is enforceable. The Commission has found that courts often have enforced passenger contract provisions when presented with disputes. Again, the Commission does not have jurisdiction to address disputes over these contracts, but is happy to contact a cruise line on a passenger's behalf.

As a matter of information, following are some examples of typical clauses that might be encountered in a passenger ticket contract:

1. Cruise Cancellations. The ticket contract usually specifies cancellation refund schedules. The percentage of cruise fare refunded to the passenger depends strictly on the number of days prior to sailing that the passenger cancels. These schedules are enforced strictly in almost all circumstances, regardless of what passengers may believe to be justified reasons for exception to the rule.

2. Port Call Changes. Cruise lines generally retain the right to drop ports or deviate from their advertised routes. Such changes can happen for a variety of reasons, and cruise lines retain full discretion in making such decisions. This is important to keep in mind if a passenger has special plans at, or an attraction to, a certain port, since the possibility exists that this port may not be called.

3. Compensation for Damage to Personal Property. Such compensation likely is limited to a small fraction of actual value, and the contract may place on the passenger the burden of demonstrating negligence. Such limitations of liability may be governed by provisions of U.S. or other law.

4. Air/Sea Packages. An airline selling tickets to passengers as part of a land/sea package may be characterized as an independent contractor, permitting the cruise line to disclaim all responsibility for an airline's failure to convey passengers to the port of departure in a timely manner. Accordingly, if you miss your sailing due to flight delays, the carrier may not be responsible for any reimbursements or in assisting you in getting subsequent boarding on the vessel. This may be the case even when the cruise operator selects the airline and arranges the bookings.

5. Medical Personnel/Concessionaires. Passenger vessels are not required to carry a ship's doctor. However, most, if not all, oceangoing vessels today do provide a doctor and medical facilities. Passengers concerned about medical services should consult their travel agents or the cruise line for the particulars of any medical services provided. Additionally, medical personnel, as well as those providing concession services on a vessel, also may be characterized as private contractors, and the contract may disclaim responsibility for such contractors' actions and omissions. It would be prudent to have a full understanding of existing liability prior to using the services of such individuals.

6. Compliance with Applicable Laws/Regulations. The ticket contract normally makes passengers themselves responsible for complying with all U.S. and foreign Customs' laws. Therefore, it is important to have explicit knowledge of what will be required of you. Many of these laws are strictly enforced with no exceptions or waivers, e.g., only certain items are acceptable to demonstrate U.S. citizenship. And, while a cruise line may offer informal advice, such advice should be confirmed, since the cruise line will not be responsible for providing erroneous information.

To alleviate some of the misunderstandings involving terms of the ticket contract, and to help ensure a pleasant and satisfying cruise experience, passengers are encouraged to obtain a copy of the contract either from the travel agent or from the cruise line itself before booking a cruise. Examine the provisions of the contract and discuss any concerns with a knowledgeable travel agent, with experienced cruisers, or with the staff of OCC.

III. ADDITIONAL SAFEGUARDS

Passengers do have certain options available to protect their financial investment. Set forth below are 3 specific examples:

1. Travel Insurance. Many passengers purchase travel insurance. However, it is important to know exactly what your insurance is covering. In general, travel insurance will cover passenger cancellation for specified reasons, such as illness, or various family emergencies. Policies can vary, and, of course, more expensive policies likely provide a wider range of benefits. In light of the aforementioned recent cruise line bankruptcies, individuals might wish to ascertain whether a particular policy covers such risks. Travel insurance can be purchased through a cruise line, travel agent, an independent broker, or directly from an insurer. In some instances, the cruise lines may sell coverage from affiliated insurers. In any case, the purchaser should determine the policy's provisions carefully to ensure they are adequate.

2. Cruise Cancellation Waivers. Certain cruise operators sell this type of coverage to their customers. They are not insurance policies. Instead, for a fee, the cruise line will waive the cancellation schedule and refund the entire fare to the customer in some circumstances. Be sure to understand the terms of such waivers. For example, some waivers expire 24 hours prior to sailing, meaning that purchasers forced to cancel a few hours prior to sailing would not be entitled to a refund.

3. Credit Card Purchases. As a precaution, ticket purchasers might wish to consider paying for their tickets with a major credit card. Some credit cards may provide passengers with protection that would not be available for debit cards or cash payments. In the few cruise line bankruptcies experienced in recent years, those passengers who paid by credit card, or who obtained third-party insurance, generally have been able to obtain a quicker refund. In one specific instance, cash paying passengers with no insurance obtained no refund, while those with insurance and those who had paid by credit card did receive refunds.

IV. OTHER ENTITIES THAT CAN PROVIDE ASSISTANCE

- The U.S. Coast Guard is concerned with safety-related matters. You may contact the Coast Guard, Marine Safety Office, that is responsible for the Control Verification Examination of the ship. Interested persons can get a referral to the appropriate office by calling Coast Guard's toll free customer hotline: 1-800-368-5647. Persons concerned with security procedures or issues also may call the same number.
 - The Vessel Sanitation Program, National Center for Environmental Health, may be contacted concerning unsanitary conditions on a cruise ship. This organization's number is: 1-770-488-7070.
-

Exhibit “6”

IN THE CIRCUIT COURT OF THE
17TH JUDICIAL CIRCUIT IN AND
FOR BROWARD COUNTY, FLORIDA

CASE NO.: 07-07894 CA CE 04

LISA ANNE CORNELL

Plaintiff,

v.

GLOBAL FINE ARTS, INC., a
Florida Corporation,

Defendant.

**PLAINTIFF'S MOTION TO ENFORCE
MEDIATED SETTLEMENT AGREEMENT**

Plaintiff, LISA ANNE CORNELL, by counsel, moves to enforce the mediated settlement agreement entered between Plaintiff and Defendant Global Fine Arts ("GFA"). By order dated October 8, 2010, this court reserved jurisdiction to enforce the agreement.

Princess Cruise Line as a party to in this motion

While Princess Cruise Lines Ltd ("PCL") was not a party to this action heretofore, PCL is joined herein as a result of its motion before the County Court, case number 10-17682 COCE 54, to transfer this matter to this Court. The County Court action was brought against GFA and PCL and related to GFA's breach of the mediated agreement and PCL's breach of its obligations as a common carrier.¹

¹ Copies of all relevant pleadings, motions and orders are contained in the Appendix.

In the County Court, PCL expressly represented its willingness to be part of this enforcement action and impliedly consented to be bound by this Court's determination of the issues. As such, Plaintiff consents to its joinder and suggests that this court has consent jurisdiction over PCL. Should PCL object to the exercise of jurisdiction over it or the court otherwise determine that it has none, Plaintiff requests that the Court remand the entire matter as to both parties to the County Court.

The mediated settlement agreement is not attached to this motion. All parties, including PCL have copies of the agreement and the Court may examine it in camera or under seal.

The agreement has express provisions relative to the "blacklisting" of the Plaintiff aboard any Carnival Corporation ship or any other carrier owned or partially owned by Carnival at the time of the agreement.. Although PCL does not own GFA and both companies are wholly owned subsidiaries of Carnival Corp., GFA was represented in the mediation by Dawn Haghighi, whose Martindale listing identifies her as Assistant General Counsel and Director of Corporate Compliance of Princess Cruise Lines, Ltd.

In the year prior to her settlement with GFA, Plaintiff spent forty seven days aboard the Grand Princess on two luxury cruises. On each of these cruises Plaintiff accompanied her disabled mother who cannot travel without assistance. The mediated settlement agreement expressly acknowledges her mother's need for accompaniment by Plaintiff.

Shortly after the settlement was concluded, Plaintiff attempted to book a cruise for her mother and her online. After several weeks of frustration and communications with call center personnel and supervisors, it was finally admitted by Mr. Maltzman that Mrs. Cornell had been blacklisted by order of PCL's general counsel, whose assistant general counsel Dawn Haghighi

negotiated the agreement. Mr. Maltzman indicated that this ban had been in effect for over a year according to the general counsel. Quite obviously that representation is at odds with Mrs. Cornell's travel for 47 days prior to the settlement's execution.

Additionally Plaintiff had on deposit with PCL from March, 2010 funds for another cruise.

Confronted with a demand that GFA and PCL release the ban on travel, GFA threatened that should the Plaintiff sue to enforce the agreement, it would assert a claim for over \$100,000 in attorneys fees. This threat was put in writing after the parties were served with process. A copy of it is in the Appendix.

Notwithstanding such bullying tactics, the Constitution of the State of Florida guarantees right of access to the courts. A party who enters into an agreement to resolve a case cannot be forced to forgo the benefit of her bargain because her opponent is a bully. If settlements are to mean anything at all, the courts must be open to hear disputes arising under them.

The mediated settlement agreement precludes Plaintiff from publicizing the terms of her settlement or the details of her claims under the Florida Deceptive and Unfair Trade Practices Act. Plaintiff has fully complied with her portion of the bargain.

Who has not complied are the Defendants. If indeed Plaintiff was banned for a year prior to the entry into the settlement agreement, then that fact was known to GFA's negotiator, Dawn Haghghi. Under those circumstances GFA breached the covenant of good faith inherent in all contracts entered into in Florida by withholding and actually concealing material information.

If the ban was imposed after the case was settled at the direction of one of negotiators of the settlement, then that is a clear breach.

As Plaintiff understands PCL's position, it objects to transporting Mrs. Cornell because she supposedly breached a contract with Princess. Actually the dispute she had was only with GFA, it arose on a Carnival vessel, not a Princess ship. Moreover, PCL is a common carrier for hire and cannot under the law of Florida discriminate against any person willing to pay the fare demanded for passage. It does retain the right to refuse boarding to those who present a danger to the ship, fellow passengers, or crew. The act of suing an art auctioneer for deceptive trade practices is no grounds for refusing transport.

PCL solicited and accepted a deposit from Plaintiff during her last cruise in the Spring of 2010. Several weeks after the execution of the mediated settlement agreement, Plaintiff attempted to book this cruise when she learned that despite the promises made to her in the settlement, she had been banned by PCL. The acceptance of a deposit from Plaintiff and the holding of such funds constitutes an additional agreement between the parties to provide transportation in the future.

Plaintiff is seeking no damages in this proceeding. It simply requests an order enforcing the settlement agreement and one requiring PCL as a common carrier doing business in Florida to accept Plaintiff for passage on the same basis that it offers transport to all other persons.

I HEREBY CERTIFY that a true and correct copy of the foregoing Motion has been furnished via U.S. mail and facsimile to **Steve Holman, Esq.** and **Jeffrey Maltzman, Esq.**, Maltzman and Partners P.A. 121 Alhambra Plaza Suite 1500, (305) 779-5664 this January 31, 2011.

CORNELL & ASSOCIATES, P.A.

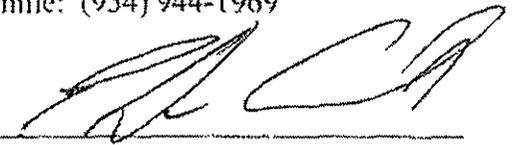
Attorneys for the Plaintiff

2645 Executive Park Dr

Weston, FL 33331

Telephone: (954) 524-2703

Facsimile: (954) 944-1969

BY: 

G. WARE CORNELL, JR.

Fla. Bar No. 203920

ware@warecornell.com

Exhibit “7”

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IN THE CIRCUIT COURT OF THE 17TH
JUDICIAL CIRCUIT IN AND
FOR BROWARD COUNTY, FLORIDA

CASE NO. 07-77894

LISA ANNE CORNELL,
Plaintiff,

VS.

GLOBAL FINE ARTS, INC.,
Defendants.

-----/

Broward County Courthouse
201 S.E. 6th Street
Ft. Lauderdale, Florida
Thursday, 2:03 p.m.
February 2, 2012

The above-entitled cause came on for Notice of
hearing before the Honorable Eileen M. O'Connor,
before Violet Varga Smith, Shorthand Reporter,
Notary Public for the State of Florida at Large.



1 APPEARANCES:

2

3 ON BEHALF OF THE PLAINTIFF:
 4 CORNELL & ASSOCIATES, P.A.
 5 2645 Executive Park Drive
 6 Weston, Florida 33331
 7 BY: G. Ware Cornell, Esquire

8

9 ON BEHALF OF THE DEFENDANT:
 10 MALTZMAN & PARTNERS, P.A.
 11 121 Alhambra Plaza, Suite 1500
 12 Coral Gables, Florida 33146
 13 BY: Steve Holman, Esquire

14

15 ALSO PRESENT: Micah Longo

16

17

18 WITNESS	19 DIRECT	20 CROSS
21 MICHAEL BROWN		
22 (By Mr. Cornell)	7	--
23 (By Mr. Holman)	--	30
24 MARILYN MCGILLVRAY		
25 (By Mr. Cornell)	36	--
(By Mr. Holman)	--	--
LISA ANNE CORNELL		
(By Mr. Cornell)	46	--
(By Mr. Holman)	--	--

21

22 MICHAEL BROWN
 (By Mr. Cornell) 7 --
 (By Mr. Holman) -- 30

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25 MARILYN MCGILLVRAY
 (By Mr. Cornell) 36 --
 (By Mr. Holman) -- --

26

27 LISA ANNE CORNELL
 (By Mr. Cornell) 46 --
 (By Mr. Holman) -- --

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1 Thereupon, the following proceedings were had:

2 THE COURT: We're here on Lisa Anne
3 Cornell versus Global Fine Arts, Case Number
4 07-77894. Counsel announce your appearances
5 for the record, please.

6 MR. CORNELL, JR.: Ware Cornell on behalf
7 of the plaintiff and movant.

8 MR. HOLMAN: Steve Holman on behalf of
9 the defendant, your Honor.

10 THE COURT: Okeydoke. Your motion, you
11 may proceed.

12 MR. CORNELL, JR.: Okay. Judge, let me
13 just -- would you like just very brief what we
14 are going to be doing today?

15 THE COURT: Well, sure.

16 MR. CORNELL, JR.: Okay.

17 THE COURT: Very brief.

18 MR. CORNELL, JR.: Very brief.

19 THE COURT: Because I remember this case.
20 It's--

21 MR. CORNELL, JR.: I know you do.

22 THE COURT: The Princess, she and your
23 mother, she and your wife can't get on
24 Princess, there was a settlement agreement
25 before, mediation and the parties to the



1 mediation was Global Fine Arts. Okay.

2 MR. CORNELL, JR.: Okay. Please the
3 Court, exhibit book which we will introduce
4 exhibits as they come up and we have with us
5 certain number of witnesses to testify.

6 First witness who will testify, his name
7 is Mike Brown, he's a systems analyst and data
8 base expert who is going to talk about the data
9 base records that were given to us by the
10 Princess under subpoena which show the banning
11 of Lisa Cornell and he will be the first
12 witness.

13 The second witness will be Mrs. Marilyn
14 McGillvray, who is my wife's mother. My wife
15 will testify, Mrs. Cornell. And depending on
16 what happens, I may or may not call myself to
17 the stand.

18 THE COURT: What about Mr. Longo?

19 MR. CORNELL, JR.: Mr. Longo has passed
20 the bar but they haven't given him the magic
21 words. So if I examine myself, I can do it one
22 of two ways, ask myself questions or give
23 remarks, I'm not sure I want to testify but I
24 could. And had Mr. Maltzman been here, I would
25 have called Mr. Maltzman for the purposes that



1 had an agreement, that they had agreed to it and I
2 said well, there's one more thing that I have a
3 condition and he got very upset with me and said
4 this was not the time to bring into it conditions.
5 And I said unfortunately it was a drop dead
6 consideration for me.

7 Q. And what was that condition?

8 A. The condition was that they not ban
9 me from the cruise line and I went in and I
10 explained to him why this was an issue because he
11 didn't understand why this would be even an issue.

12 Q. Why did you -- why were you concerned
13 about this as an issue?

14 A. Because I knew both from reading in
15 the internet, it's all over the internet and I knew
16 that Princess had a policy of banning anybody who
17 brought a lawsuit forward. A civil lawsuit.

18 Q. And how long did it take to negotiate
19 the final agreement incorporating both issues?

20 A. Do you mean what time we left?

21 Q. Correct.

22 A. We left approximately 8PM, between
23 eight, and 8:30PM.

24 Q. Was Mr. Tetunic still there?

25 A. No. He had left, about an hour



1 MR. CORNELL, JR.: That's fine, thank
2 you.

3 THE COURT: Okay.

4 MR. CORNELL, JR.: Please the Court, we
5 don't dispute that Dawn Haghighi works for
6 Princess Cruise Lines and she attended the
7 hearing, I think the Court has already heard
8 that and knows that and we don't dispute that
9 and Mona Ehrenreich works for Princess Cruises.
10 Beyond that, you know, they were the people who
11 attended the mediation and they were -- they
12 had knowledge of it and they were acting,
13 quote, as Global Fine Arts' counsel.

14 And what they agreed was that, that
15 Global Fine Arts which was represented by
16 Princess lawyers, would not take any action to
17 encourage or entice any cruise line to refuse
18 to grant either Lisa Cornell or Ware Cornell
19 passage on any cruise ship.

20 Now, what has happened, if you look at
21 Exhibits 1 and 2, look at Exhibit 2 first,
22 would the Court, please. The Court will see
23 that on 12/20/2010, the following happened:
24 Princess Cruises again banned Mrs. Cornell.
25 But they added two other cruise lines, Princess



1 Australia which is P&O and Cunard to this.

2 The directions for all of this are set
3 forth in Exhibit 1. And if you will look at
4 Exhibit 1, you will see the employee log-in and
5 the employee log-in comes out, it clearly comes
6 out of legal. And that's --

7 THE COURT: Where did that come from?

8 MR. CORNELL, JR.: LGL.

9 THE COURT: Where?

10 MR. CORNELL, JR.: Right there, right in
11 front of you.

12 THE COURT: LGLLWO.

13 MR. CORNELL, JR.: Right.

14 THE COURT: So you decided that that
15 means legal? Nobody has testified to that.

16 MR. CORNELL, JR.: Certainly. But I
17 think it's --

18 THE COURT: You want me to take that
19 leap?

20 MR. CORNELL, JR.: I think you have to
21 take that leap.

22 THE COURT: I think even your expert
23 didn't testify to that.

24 MR. CORNELL, JR.: My expert doesn't work
25 for Princess cruises. And they didn't bring



1 been manipulated and it wouldn't be manipulated
2 other than the fact that it is in breach of the
3 agreement. We have the picture of the sign
4 which says Princess Cruises owns and operates
5 Global Fine Arts.

6 THE COURT: Go ahead.

7 MR. CORNELL, JR.: And the bottom line is
8 that representatives from Princess did the
9 mediation, made the deal and immediately went
10 out and breached it. Okay?

11 They can say, well, we were wearing our
12 Princess hat and not our Global Fine Arts hat,
13 but contracts have to be negotiated in good
14 faith. There was a covenant of good faith and
15 all contracts and it is obvious that this
16 agreement was never intended by the defendant
17 to be honored even though insisted by the
18 plaintiff that it be honored.

19 So under those circumstances we ask the
20 Court to enforce the agreement and order Global
21 Fine Arts to have Princess remove any
22 restriction on Lisa Cornell's traveling. As
23 well as on Cunard which they did after the fact
24 on 12/20, and P & O and anybody else.

25 THE COURT: Okay, go ahead.



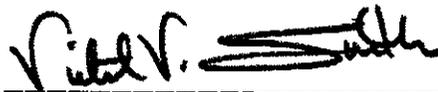
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CERTIFICATE OF SHORTHAND REPORTER

STATE OF FLORIDA)
) SS.
COUNTY OF DADE)

I, VIOLET VARGA SMITH, Shorthand Reporter,
Notary Public, do hereby certify that I was
authorized to and did stenographically report the
foregoing proceedings and that the transcript is a
true and correct transcription of my stenotype notes
of the proceedings.

Dated this 4th day of May, 2012.



VIOLET VARGA SMITH
Shorthand Reporter



Exhibit “8”

4293

IN THE COUNTY COURT IN AND FOR
BROWARD COUNTY, FLORIDA

CASE NO.

10-17682

LISA ANN CORNELL,

COCE

Plaintiff,

v.

SERVED
Date 11-15-2010 Time 10:40 AM
RSA # 1
SUMMON'S No & Number
Is A Sheriff Appointed Process Server In Good Standing
In Broward Co.

GLOBAL FINE ARTS, INC., a
Florida Corporation, and PRINCESS
CRUISE LINES, LTD.

Defendants.

54

LISA TRACHMAN

TO:

THE STATE OF FLORIDA:

Princess Cruise Lines, LTD
c/o CT Corporation System (Registered Agent)
1200 S. Pine Island Road
Plantation, FL 33324

To All and Singular the Sheriffs of said State:

YOU ARE HEREBY COMMANDED to serve this summons and a copy of the Complaint
or petition in this action on Defendant:

Each defendant is required to serve written defenses to the complaint or petition on G. Ware
Cornell Jr., Esq., Attorney for Plaintiff, whose address is:

Cornell & Associates, P.A.
2645 Executive Park Drive
Weston, FL 33331

within twenty (20) days after service of this summons on that Defendant, exclusive of the day of service, and to file the original of the defenses with the clerk of this court either before service on Plaintiff's attorney or immediately thereafter. If a Defendant fails to do so, a default will be entered against that defendant for the relief demanded in the complaint or petition.

IN ACCORDANCE WITH THE AMERICANS WITH DISABILITIES ACT OF 1990 (ADA), DISABLED PERSONS WHO, BECAUSE OF THEIR DISABILITIES, NEED SPECIAL ACCOMMODATION TO PARTICIPATE IN THIS PROCEEDING SHOULD CONTACT THE ADA COORDINATOR AT 201 SOUTHEAST 6TH STREET, ROOM 136, FORT LAUDERDALE, FLORIDA, 33301 OR TELEPHONE VOICE/TDD (954) 357-6364 NOT LATER THAN FIVE BUSINESS DAYS PRIOR TO SUCH PROCEEDING.

WITNESS my hand and the Seal of said Court.

11/12/10

HOWARD C. FORMAN
As Clerk of said Court

AKEENA PEREIRA
A TRUE COPY
By COUNTY COURT SEAL
As Deputy Clerk

IN THE COUNTY COURT IN AND FOR
BROWARD COUNTY, FLORIDA

CASE NO.

COCE

LISA ANNE CORNELL,

Plaintiff,

vs.

GLOBAL FINE ARTS, INC., a
Florida Corporation, and PRINCESS
CRUISE LINES, LTD

Defendant

SERVED 82
Date 11-15-2010 time 10:40 AM
Printed Name & Number D. Sais #1
Is A Sheriff Appointed Process Server In Good Standing
In Broward Co.

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LISA TRACHMAN

**HOWARD C. FORMAN
A TRUE COPY**

COMPLAINT

LISA ANNE CORNELL, by counsel, sues the Defendants as follows:

JURISDICTION

1. This is an action for specific performance of a contract having an intrinsic value of less than \$15,000, and for injunctive relief against a common carrier for denial of the right of non-discrimination in carriage, said right having an intrinsic value of less than \$15,000.

PARTIES

- 2. Plaintiff LISA ANNE CORNELL ("LISA") is an individual residing in Broward County, Florida.
- 3. Defendant GLOBAL FINE ARTS, INC ("GFA") is a corporation whose principal place of business is in Broward County, Florida. GFA is a wholly owned subsidiary of Carnival Corp.

4. Defendant PRINCESS CRUISE LINES, LTD ("PRINCESS") is a foreign corporation authorized to do business in Florida and maintaining an agent in Broward County, Florida. PRINCESS is a common carrier for hire transporting individuals by ship to and from ports within the State of Florida, Broward County, and elsewhere. PRINCESS is a wholly owned subsidiary of Carnival Corp.

5. GFA maintains executive offices at the headquarters of PRINCESS in Santa Clarita, California. PRINCESS and GFA have interlocking and overlapping boards of directors, and PRINCESS' legal department operates as the in-house legal department of GFA.

GENERAL ALLEGATIONS

6. In February, 2007 LISA boarded the Carnival Imagination, a ship owned by Carnival Corp and not PRINCESS.

7. While on board she attended an art auction conducted by GFA and agreed to purchase to works by an artist. Upon LISA's canceling of her purchase a dispute arose between GFA and LISA over GFA's manner and method of conducting its auctions and its right to withhold from her refund the sum of \$585 as a buyer's premium.

8. This dispute resulted in the a lawsuit which was filed by LISA against GFA alleging a violation of the Florida Deceptive and Unfair Trade Practices Act ("FDUTPA"). PRINCESS was not a party to this litigation.

9. On August 8, 2010 GFA and LISA settled their dispute.

10. The mediated settlement agreement is not attached hereto since it contains terms which both parties agreed would be confidential. Its contents are known to PRINCESS whose in-house counsel participated in the mediation on behalf of GFA.

11. One of the conditions of the agreement related to a promise that GFA would not take steps to cause LISA to be barred from cruising on vessels in the Carnival fleet specifically including those operated by PRINCESS.

12. The provision about travel was extensively negotiated by the parties who made detailed provisions about traveling and attending art auctions conducted by GFA on such vessels. At the present time the only vessels in which GFA conducts auctions are those owned and operated by PRINCESS.

13. Plaintiff has fully performed all conditions precedent prior to bringing this action, as well as all performance required of her under the mediated agreement.

COUNT ONE
SPECIFIC PERFORMANCE

14. Plaintiff realleges and incorporates paragraphs 1-13 as set forth herein.

15. Every contract formed and to be performed in the State of Florida has an implied covenant of good faith.

16. GFA, to the extent PRINCESS may have previously barred LISA from travel, breached that covenant of good faith by failing to advise LISA of what at least one of its negotiators, an in-house lawyer working and paid by PRINCESS, knew, that PRINCESS had already barred LISA from carriage on its vessels.

17. To the extent that PRINCESS' position is false and to the extent that it banned LISA after execution of the agreement PRINCESS, as an agent of GFA breached the agreement by its conduct.

18. Plaintiff is entitled to specific performance of her mediated settlement agreement with GFA.

COUNT TWO
INJUNCTION

19. Plaintiff realleges and incorporates paragraphs 1-13 as set forth herein.

20. PRINCESS claims that it did so over a year ago and it did not violate the agreement. It further contends that it barred LISA because it did not want a passenger who breached a contract with it.

21. PRINCESS' explanations are false regarding the timing of its lockout and its claim that LISA breached any contract with it.

22. PRINCESS as a common carrier has the duty to give passage to anyone agreeing to pay its fares, subject to certain non-relative exceptions such as passengers who present a threat to the vessel, crew, and/or fellow passengers.

WHEREFORE Plaintiff prays that this court order GFA to comply with its agreement with Plaintiff and enjoin PRINCESS from denying carriage to Plaintiff, and award her all taxable costs.

CORNELL & ASSOCIATES, P.A.
Attorneys for the Plaintiff
2645 Executive Park Dr
Weston, FL 33331
Telephone: (954) 524-2703

Facsimile: (954) 944-1969

BY: 

G. WARE CORNELL, JR.

Florida Bar No. 203920

Ware@warecornell.com


**Service of Process
Transmittal**

11/15/2010

CT Log Number 517599536


RECEIVED

NOV 16 2010

LEGAL AFFAIRS

TO: Mona Ehrenreich, General Counsel
Princess Cruise Lines, Ltd.
24305 Town Center Drive
Santa Clarita, CA 91355

RE: **Process Served in Florida**

FOR: Princess Cruise Lines, Ltd. (Domestic State: BM)

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

TITLE OF ACTION: Lisa Ann Cornell, Pltf. vs. Global Fine Arts, Inc., etc., and Princess Cruise Lines, Ltd., Dfts.

DOCUMENT(S) SERVED: Summons, Complaint

COURT/AGENCY: Broward County Court, FL
Case # 10-17682 COCE 54

NATURE OF ACTION: Breach of Agreement regarding Pltf.'s travel on Princess Cruise Lines by denying carriage to Pltf. - seeking injunclion

ON WHOM PROCESS WAS SERVED: C T Corporation System, Plantation, FL

DATE AND HOUR OF SERVICE: By Process Server on 11/15/2010 at 10:40

APPEARANCE OR ANSWER DUE: Within 20 days after service, exclusive of the day of service

ATTORNEY(S) / SENDER(S): G. Ware Cornell, Jr.
Cornell & Associates, P.A.
2645 Exocutive Park Dr.
Weston, FL 33331
954-524-2703

ACTION ITEMS: SOP Papers with Transmittal, via Fed Ex 2 Day , 794116367551

SIGNED: C T Corporation System

PER: Donna Moch

ADDRESS: 1200 South Pine Island Road
Plantation, FL 33324

TELEPHONE: 954-473-5503

Page 1 of 1 / BH

Information displayed on this transmittal is for CT Corporation's record keeping purposes only and is provided to the recipient for quick reference. This information does not constitute a legal opinion as to the nature of action, the amount of damages, the answer date, or any information contained in the documents themselves. Recipient is responsible for interpreting said documents and for taking appropriate action. Signatures on certified mail receipts confirm receipt of package only, not contents.

Exhibit “9”

IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA

LISA ANNE CORNELL,

Plaintiff,

vs.

GLOBAL FINE ARTS, INC., a
Florida Corporation,

Defendant.

CASE NO.: CACE 07-17682

JUDGE: EILEEN M. O'CONNOR

DIVISION: 04

RECEIVED
2/13/12

ORDER ON PLAINTIFF'S MOTION TO ENFORCE MEDIATED SETTLEMENT
AGREEMENT

The Court held an evidentiary hearing on February 2, 2012, at which time attorneys for both parties were present and evidence was received.

This Court finds that plaintiff failed to prove a violation of the settlement agreement.

WHEREFORE, this Court **denies** plaintiff's motion to enforce mediated settlement agreement.

DONE AND ORDERED in Chambers on February _____, 2012, at Fort Lauderdale, Broward County, Florida.

EILEEN O'CONNOR

FEB - 7 2012

LOOPY

EILEEN M. O'CONNOR, CIRCUIT JUDGE

Copies furnished to parties:

Steve Holman, Esq.
Jeffrey Maltzman, Esq.
MALTZMAN AND PARTNERS, PA
121 Alhambra Plaza
Suite 1500
Coral Gables, FL 33134

G. Ware Cornell, Jr.
CORNELL & ASSOCIATES, PA
2645 Executive Park Drive
Weston, FL 33331

Exhibit “10”

FEDERAL MARITIME COMMISSION

WASHINGTON, D.C.

DOCKET NO. 13-02

LISA ANNE CORNELL and
G. WARE CORNELL, Jr.

v.

PRINCESS CRUISE LINES (CORP)
CARNIVAL plc
and CARNIVAL CORPORATION

**DECLARATION OF SIMON WALTERS IN SUPPORT OF
MOTION TO DISMISS AND MOTION FOR SUMMARY JUDGMENT**

1. I, Simon Walters, am General Counsel for Carnival plc and am duly authorized to swear this Declaration on behalf of Carnival plc in support of the Motion to Dismiss and Motion for Summary Judgment now before the Federal Maritime Commission. I am over the age of 18 and make this declaration based on information known to me personally.

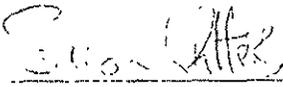
2. Carnival plc is located in the United Kingdom and operates the Cunard Line and P&O brands of cruises.

3. Princess Cruise Lines Ltd. of Santa Clarita, California acts as the sales agent in the United States responsible for handling reservations by U.S. residents on Cunard brand vessels and on P&O brand vessels operating in the Australian region only.

4. While I am informed and believe that Princess will not process a cruise reservation for Lisa Cornell through their offices, Carnival plc had no involvement whatsoever in Princess' decision to not accept bookings from Lisa Cornell.

I declare under penalty of perjury that the foregoing is true and correct.

Date: February 26th, 2013



SIMON WALTERS